Keeler Brass Automotive Group, a Division of Keeler Brass Company and K B Lighting, a Joint Venture of Keeler Brass Company *and* Robert Puckett *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO. Cases 7–CA–28793, 7–CA–29260, 7–CA–29364, and 7–RC–18961

February 19, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On April 10, 1990, Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.[1]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Keeler Brass Automotive Group, a Division of Keeler Brass Company and K B Lighting, a Joint Venture of Keeler Brass Company, Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

IT IS FURTHER ORDERED that Case 7–RC–18961 is severed from Cases 7–CA–28793, 7–CA–29260, and 7–CA–29364, and is remanded to the Regional Director for further appropriate action.

[1] In a letter dated December 19, 1990, the Union requested leave to withdraw the election petition in Case 7–RC–18961. On January 22, 1991, the Respondent-Employer filed an opposition to the Union's request to withdraw the election petition. On February 1, 1991, the Union filed a reply to the Respondent-Employer's opposition.

As it has been more than 1 year since the June 29, 1989 election, and there is no showing of an attempt to circumvent the intent of Sec. 9(c)(3) of the Act, the Union's request is granted. Accordingly, we will sever Case 7–RC–18961 and remand it to the Regional Director of Region 7 for further appropriate action.

Richard F. Czubaj, Esq., for the General Counsel.
David E. Khorey, Esq. and *Gary P. Skinner, Esq.*, of Grand Rapids, Michigan, for the Respondent.
Michael L. Fayette, Esq., of Grand Rapids, Michigan, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO (Union or UAW) filed charges against Keeler Brass Automotive Group, a Division of Keeler Brass Company and K B Lighting, a joint venture of Keeler Brass Company (Respondent, Employer, or Keeler Brass) on May 10 and June 13, 1989.[1] Based on these charges and objections to an election, and certain challenged ballots, the Regional Director for Region 7 issued a complaint in Cases 7–CA–29364 and 7–CA–29260 as well as his report on objections and determinative challenged ballots and his order consolidating these matters.[2] The complaints allege that Respondent violated Section 8(a)(1) of the National Labor Relations Act (Act) by the actions of its employees Lori Lotterman and Bruce Houseman. These alleged unfair labor practices are also the subject of objections to an election held June 29, and there are several other objections as well as challenged ballots presented for determination.

Hearing was held in these matters on August 21–23 and September 18–22 in Grand Rapids, Michigan. Briefs were received from all parties on or about December 7.[3] A joint stipulation of the Employer and Union regarding several material factual matters was received on or about March 14, 1990. Based on the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Michigan corporation, with an office and place of business, inter alia, in Kentwood (Grand Rapids), Michigan, engages in the manufacture and sale of parts and other goods primarily for the automotive industry. Respondent's answer admits the jurisdictional allegations of the complaints and I find that Respondent is now and has at all times material to this proceeding been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is now and has been at all times material to this decision, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES, OBJECTIONS TO ELECTION, AND CHALLENGED BALLOTS

A. *Background*

Respondent is engaged in the production and manufacture of automotive parts in two facilities located in Grand Rapids,

[1] All dates are in 1989 unless otherwise noted.

[2] A complaint also issued in Case 7–CA–28793; however, the matters raised by that case were settled during this trial and will not be discussed. This settlement also disposed of all but allegation 8(f) of the complaint in Case 7–CA-29260.

[3] The Respondent has filed a motion to correct transcript dated December 6, 1989, which is incorporated herein by reference and granted.

Michigan. The two facilities are known as the Kentwood plant and the Stevens Street plant. There are approximately 850 people employed at the Kentwood plant and approximately 230 people employed at the Stevens Street plant. Together, the employees at the two plants comprise the relevant bargaining unit in this case.

Specifically, this case involves two unfair labor practice charges, which are also objections to the election, 4 other election objections and 27 challenged ballots arising from a representation election held on June 29. The charges and objections were filed by the Charging Party/Petitioner Union after the election, which other than the challenged ballots ended with a 7 vote margin in favor of Respondent. As to the challenged ballots at issue, the Respondent challenged one voter and the NLRB automatically challenged several voters because their names were not included on the voting list.[4] The Union contends in part that timekeepers and certain hourly production employees that the Respondent designated as temporary supervisors were ineligible to vote.

The alleged unfair labor practices/objections, the remaining objections and the challenged ballots will be addressed in separate sections of this decision.

B. *The Alleged Unfair Labor Practices engaged in by Respondent's Employees, Lotterman and Houseman*

1. Lotterman's removal of union literature

The complaint alleges that Respondent's clerk-typist employee Lori Lotterman on or about June 7, 12, and 14, interfered with the Union and the protected concerted activities of Respondent's employees by removing and retaining union campaign literature from employee breaktables. Respondent's employee David Benn testified that Lotterman rode through his department in Respondent's Kentwood plant on a bicycle on June 7 picking up all union literature that had been left on employee breaktables. She replaced this literature with a company letter concerning the Union. He testified that he had not seen Lotterman take literature from the tables prior to this occasion.

Employee Shelly Jo VanDyke testified that on June 14, she observed Lotterman picking up union papers from the employee breaktables in her department. Lotterman placed the papers in the basket of the bicycle she was riding and left. She also testified that she had never before seen Lotterman picking up anything from these tables or cleaning them.

Employee Diana Brown testified that on June 7, she saw Lotterman remove union literature from employee breaktables in her department and replace it with company literature. She testified that Lotterman took the union literature with her although there were trash barrels nearby. Brown had not seen Lotterman picking up items from the breaktables before the incident she described.

Employee Dale Moelker testified that on June 12, while working in the plant paint room, he observed Lotterman pick up and carry away with her union literature from breaktables in that department.

Employee Julia DeYoung observed Lotterman on June 14 ride up to the breaktables in her department and begin removing union literature. DeYoung approached Lotterman and asked her what she was doing with the union papers. She testified that Lotterman replied that she had been instructed to pick up the papers and get rid of them. DeYoung told Lotterman she could not do that and attempted to get the papers back. However, Lotterman would not give them up and left the area with the papers. Shortly after this incident, DeYoung asked her supervisor, Al Lynch, whether Lotterman had the authority to remove the union literature and he said she did. About an hour later, Lynch approached DeYoung and said he had checked into the matter and that Lotterman had the right to take the union literature just as DeYoung had the right to take company literature and dispose of it after she was finished with it. He also said the Company did not consider the breaktables involved a designated break area and that if employees wanted to keep material, they should keep it in their lockers and not leave it on the tables. Prior to this incident, DeYoung had not seen Lotterman remove anything from the breaktables. The workers in DeYoung's department are responsible for cleaning the breaktables in that department.

Lotterman testified that she had been employed as a clerk-typist in Respondent's human resources department since November 1988. Part of her regularly assigned duties require her to bike around the plant and post memos given to her by her supervisor on company bulletin boards. She had no assigned cleanup duties. She testified that she is a ''neat freak'' and is offended by trash and took it on herself to clean up break areas that she passed in the rounds of her posting. She testified that she made no distinction between types of materials left on breaktables, she cleaned them off regardless of what was left there. She would either place the removed material in a waste barrel at the site or take it back to her department to throw away.

She acknowledged that she was approached by DeYoung while picking up papers from the breaktable in DeYoung's department. She testified that DeYoung was angry about the removal of the union literature and she told DeYoung that she had been instructed to remove the papers. However, she denied in her testimony that she had been so instructed, stating that she made the statement to DeYoung because she was mad and wanted to get away.

On cross-examination, Lotterman admitted that she was instructed by her supervisor, Sherry Kaufman, to place company literature on the breaktables during the campaign preceding the election. At the time she placed the company literature, she removed union literature that was on the tables as a matter of routine. Lotterman was aware that the Company's ''no solicitation—no distribution'' rule allows the dis-

[4] Schedule C to the Regional Director's report on objections lists the names of persons whose ballots were challenged because their names did not appear on the election eligibility list. At the hearing, the parties stipulated that the ballots of the following named persons who are included in schedule C should be counted: John Mason, Bruce Van Wyk, Barbara Koning, Gilbet Lopez, Annette McFall, Henry Teunison, Robert Aspinall, Duane Hoffman, Doug Marsh, Ken Scholten, Ron Balhoski, Ron Collins, Renee DeGroot, Anna Marie Dukes, April Fee, Denise Gray, and Richard Thomas.

The parties further stipulated that the ballots of the following named persons on schedule C should not be counted: Randy Unger and Roger Petrolje.

Schedule A to the Regional Director's report on objections lists voters whose ballots were challenged by the Union. The parties stipulated at the hearing that the ballots of the following named persons on schedule A should be counted: Joan Miller, George Pott, Ray Hall, Roger Van Wyk, and Jack Whinery Jr.

The parties further stipulated that the ballots of the following named persons on schedule A should not be counted: Jim Rykse, Ray Schall, Howard Kamps, Jeff Chandler, Richard Claypool, and Ed Zemaitis.

tribution of articles such as union literature in nonwork areas during nonwork time. Lotterman's affidavit given to the Board during the investigation of this case states, ''Cleaned off tables as a matter of enforcing the Company's 'no solicitation rules.' Dick Rumsfeld (then head of the Company's human resources department) used to instruct me to remove solicitous items, such as Avon, et cetera, and Company memos.''

She denied in her testimony that Rumsfeld had instructed her to remove items from tables, explaining that Rumsfeld had told her to dispose of an Avon catalogue that she had received in the mail. She also testified that her supervisors were unaware of her picking up activity.

I find that Lotterman, when confronted by employee Julia DeYoung while confiscating union literature, said that she had orders to pick up the union literature and get rid of it. Afterwards, DeYoung confronted her supervisor, who stated after conferring with higher authority, that Lotterman had the right to confiscate and destroy the union's literature. Because of Lotterman's conflicting testimony, I credit DeYoung's version of the conversation between them and find that Lotterman was picking up union literature under instructions from management. DeYoung's supervisor, Al Lynch, did not testify and thus I fully credit her testimony that higher management had condoned Lotterman's activity after being informed of it. I agree with General Counsel that Respondent adopted and condoned Lotterman's actions and, as a result, became responsible for them.

For an employer to be liable for the conduct of nonsupervisory personnel which interferes with the rights of employees under the Act, there need not be express authorization for the acts committed. ''The existence of that interference must be determined by careful scrutiny of all the factors, often subtle, which restrain the employees' choice and for which the employer may fairly be said to be responsible.'' *Machinists Lodge 35 (Serrick Corp.) v. NLRB*, 311 U.S. 72, 80 (1940). In making that determination, ''the crucial question is whether, under all the circumstances, the employees could reasonably believe that the [nonsupervisor] was reflecting company policy, and speaking and acting for management.'' *Aircraft Plating Co.*, 213 NLRB 664 (1974). I find that Lotterman's condoned destruction of union literature taken from employee breaktables while replacing such literature with company campaign literature is violative of Section 8(a)(1) of the Act. I find from the evidence that Lotterman did not routinely pick up material left on breaktables and that her June activities complained of were specifically aimed at reducing the availability of union literature and not merely to clean up trash. To the extent that Lotterman's testimony conflicts on this point with the testimony of General Counsel's witnesses, I credit the testimony of those witnesses.

On the other hand, I do not find that Lotterman's activity sufficiently interfered with the conduct of the election to justify overturning the election. The literature in question had already been placed into employee's hands and had been left on the tables. The Union continued to successfully place its literature in the plant and by this and other means effectively communicated its message to employees. I will recommend that the objection to the election based on Lotterman's actions be dismissed.

2. Houseman's poll of employees' union sympathies

The complaint in Case 7–CA–29260 alleges that on or about May 9, Respondent, through its agent, Bruce Houseman, at its Kentwood plant, coercively interrogated employees regarding their sympathies toward the Union. Employee Jerry Poling testified that he worked in Respondent's Honda department with about 37 or 38 other employees, and Bruce Houseman was his temporary or acting supervisor. Houseman reported to Ray Smith, one of Respondent's superintendents, who is in charge of 3 departments, with about 70 employees under his supervision. Each of these three departments has a foreman or acting foreman like Houseman. Poling testified that Houseman gives everyone in his department their daily job assignments and decides who will do each particular job on each day. Houseman also has the authority to release an employee early and approve taking a day off. On occasions when work was slow in Poling's department, Houseman has directed him to work in another department without checking with higher supervisors. When Houseman is not present, Poling checks with the ''set up'' man, who does the things Houseman does in his absence. Poling has never seen Houseman discipline another employee. However, Houseman's predecessor had disciplined employees, giving 3-day suspensions without pay.

On either May 8 or 9, Poling was told by a fellow employee that Houseman was asking other employees how they were going to vote in the upcoming election and writing down their responses. At this point, Poling began observing Houseman and saw him question some other employees with a clipboard or notebook in his hand. One of these employees confirmed that he had been questioned about how he was going to vote. Poling then went to fellow employee Lynn Wells and informed him of Houseman's activities. At the same time, the first employee to note Houseman's questioning approached Poling and Wells and the three employees went to talk to Superintendent Smith.

After they complained to Smith about Houseman's polling, Smith said it would be legal as Houseman was just an hourly employee and he was not doing it for him. Wells countered that as acting foreman, Houseman was an agent of Respondent and as such, not allowed to ask questions about employees' union sympathies. Smith then said that there were going to be some company attorneys at the plant later that day and he would check into the matter with them. Shortly after this conversation, Houseman approached Poling and asked if he were offended by his asking questions about how employees were going to vote. Poling said he was offended. Houseman said that he had just come from the human resources department and had been told to anticipate this response from the union organizers. At about this time, Smith approached and told Houseman to get away from Poling and do not talk to anyone.

Later that day, Poling saw Houseman together with Wells and observed Houseman tearing up some sheets of paper. Wells later told him that Houseman had apologized for asking employees about their voting preferences and said he would not do it again.

Employee Verlene Campbell testified that in early May, Houseman had approached her saying that Keeler's attorneys had authorized him to take a prevote survey on who was going to vote for the Union. This required him to write the employees' names and how they intended to vote. She told

him it was none of his business and he went to another employee and made the same request. At the time Houseman approached the witness, she was wearing four buttons indicating her support for the Union. With regard to Houseman's supervisory status, Campbell testified that she had requested a day off from Houseman and he approved her request. He checked his vacation book to see who was going to be on vacation that day as only three employees in the department can be on vacation on the same day. Superintendent Smith had told the department employees that if they had a problem or wanted anything fixed, they had to check with Houseman. This witness, like the last, had on occasion, been temporarily transferred by Houseman to work in another department. She also confirmed that the department set up man performs Houseman's functions when he is not present.

Employee Lynn Wells testified with respect to his conversation with Superintendent Smith about Houseman that Smith had said,'' well, yes, he's a supervisor, but he's still eligible to vote and he can do it.'' After much conversation, Smith said that the Company's attorneys had said that Houseman's polling activities were okay. Wells testified that later that day, Houseman approached him and said he did not want to stir up a hornet's nest and that he had been told it was okay to poll the employees on how they were going to vote. Wells told him the polling was intimidating and Houseman asked what he wanted him to do. Wells indicated he wanted the list of responses torn up and Houseman complied.

Superintendent Smith testified on direct examination by Respondent's counsel that Houseman had no responsibilities with respect to hiring employees, transferring employees or independently assigning work, disciplining or recommending employees be disciplined, or laying off employees. Houseman could approve vacations pursuant to guidelines set by Smith. As will be discussed in more detail later, these same limitations also apply to Smith. On cross-examination, Smith testified that acting supervisors like Houseman can recommend employees for hiring or transfer, can recommend layoffs depending on their departments' workload and can bring a recommendation about discipline. Houseman did not testify. I credit the testimony given by Smith about Houseman's authority given on cross-examination over his direct testimony as it appeared more truthful.

Houseman receives additional pay of $1 per hour when he is acting as a supervisor, otherwise his pay and benefits are those of any other hourly employee in his classification. He is to perform his normal hourly work while acting as supervisor. Houseman attends daily production meetings with his superintendent and other supervisors. At the production meetings the departments receive production sheets from higher management and the supervisors and acting supervisors assign work based on these production sheets. Prior to Houseman, the acting supervisor in the department was Ron Hoxie, who had authority to discipline and did not perform hourly work in addition to his supervisory duties. Smith believed that Houseman had attended supervisory meetings where the matter of dealing with employees during a union election campaign was discussed. At one of these meetings, the matter of determining how employees felt about the Union was discussed. With respect to Houseman's polling activities, Smith asked him about them after having been told of these activities by Wells. He also advised Houseman that he could not poll employees, which would be strange if he were not a supervisor. He testified that he did not check with anyone before stopping Houseman's polling and did not mention to anyone that he was going to talk to the Company's attorneys about the situation.

The conflicts in the testimony of Poling, Wells, and Smith, which primarily exist on the matter of whether Smith did or did not confer with company attorneys on the polling question, are immaterial to a determination of this unfair labor practice allegation. Insofar as it is necessary to resolve this conflict, I find that Smith may well have mentioned checking with the company attorneys and credit the testimony that he did. This is a matter which could easily be forgotten.

The threshold question with respect to this alleged unfair labor practice is whether Houseman is a statutory supervisor or a statutory agent of Respondent. As will be discussed in more detail in the section of this decision dealing with challenges to the temporary or acting supervisors' ballots, the Respondent does not have a uniform policy with respect to acting supervisors' authority, or when and to what degree persons appointed to that position will serve in it. There is evidence that a former head of Respondent's human resources department considered temporary supervisors to have the same authority as full-time supervisors, whether they exercised such authority or not. Houseman was shown to be one of the most active of the temporary supervisors, exercising broader supervisory authority than most and serving in the capacity of temporary supervisor more often than most. Since his designation as temporary supervisor on March 1, 1989, he served in that capacity approximately 700 hours through June 29, 1989. Certainly he can be found to have served a ''regular and substantial'' portion of his time as temporary supervisor, a significant factor in the determination of his supervisory status. *Canonie Transportation Co*., 289 NLRB 299 (1988).

As can be seen from the facts set out above, Houseman can recommend discipline, can direct the work of others with a fair degree of independence, can recommend an employee for hiring or transfer and the employees under his supervision had been told by Supervisor Smith to check with Houseman on work related problems. He attends regular daily production meetings with his supervisor and other supervisors and attended supervisory meetings where the election campaign was discussed, including one such meeting where the matter of determining union sympathies was a topic. I find that evidence of Houseman's supervisory status meets both the primary and secondary criteria for determining that status and find that he is a statutory supervisor when he serves as an acting or temporary supervisor. He was acting in this capacity on the dates he polled employees and thus, his actions are attributable to the Respondent.

With respect to this question, it must also be noted that Respondent's supervisors at the level of Smith do not possess unlimited discretion in their position as supervisors; rather, their independent authority is in many ways rather limited. Like Houseman, Smith receives fairly detailed instructions on what is to be done in his departments on a daily basis from higher authority, all discipline desired to be administered by him must first be cleared with higher management, and most decisions such as layoff and grievances are also a matter of joint determination with higher management or the human resources department.

Even in the event that Houseman might ultimately be found not to be a statutory supervisor, he clearly can be found to be an agent of Respondent with respect to the polling. The unrebutted testimony of employee Verlene Campbell that he told her that his polling activity was done on authority of Respondent's attorneys clearly places responsibility for his actions at Respondent's feet. Respondent put Houseman in a position in which employees could reasonably perceive his actions as being on behalf of management in connection with its antiunion campaign. Respondent is therefore responsible for his actions within the area of such apparent authority. *EMR Photoelectric*, 251 NLRB 1597, 1601 (1980), citing *Hanover Concrete Co*., 241 NLRB 936, 939 (1979).

I believe the taking of the poll in the course of the preelection campaign is clearly unlawful and could have served no legitimate purpose. *Struksnes Construction Co*., 165 NLRB 1062 (1967). On the other hand, I do not believe under the circumstances it could have affected the outcome of the election in any way whatsoever. The polling was almost 2 months prior to the election, was extremely limited in scope and was stopped almost at its inception. No one was shown to have been in any way coerced by Houseman's actions and the polling was halted and the poll openly destroyed on the matter being brought to the attention of Superintendent Smith by a union campaign committee member, Lynn Wells. The evidence reflects that Houseman apologized for his actions to at least some of the employees in his department. Therefore, though I find that Houseman's actions constitute a violation of Section 8(a)(1) of the Act, for the reasons set out above, I do not find that it affected the employees' free choice in the election and will recommend that the coextensive objection to the election be dismissed.

C. *The Objections to the Election not Alleged to be Unfair Labor Practices*

1. The speech by the Employer's president

The Employer's president John DeMaria testified that he had held that position for about 6 months prior to the election at Keeler Brass. On June 27, he gave a speech to four different groups of employees at Keeler's involved plants. The objection to this speech alleges that in one or more of his talks to employees on June 27, DeMaria promised that he would never cut employees' wages, asked employees to give him a chance to keep his promise, and if in a year's time they were not satisfied, they could then vote the Union in.

DeMaria testified that he read a printed speech to the employees and did not take questions. The printed speech in pertinent part states:

> I firmly do not believe that a union will be of any help here at Keeler. In fact, as I explained to you in my State of the Business meeting, it could hurt us with our customers. Keeler is a company that is almost 100 years old and it has succeeded without the help or interference of the UAW. I will be the first to agree with you that the past few managements at Keeler have not done a very responsible job. The wage cuts are the worst thing management ever did here. I don't believe in wage cuts and never even considered cutting wages in any of the companies I have managed.
>
> . . . But I know one thing,—I intend to fulfill my commitment to you and to Keeler, and I ask you to give me the opportunity to do that. I have only been in charge a few months, and it takes longer than that to turn Keeler around and make it into something we would all be proud of. Be fair to me and give me the opportunity to prove myself. If I let you down, under the law, the UAW can petition for a new election in one year, and they can campaign throughout that period if they want to. So, you always have the opportunity to bring the UAW in here if I let you down.

Union Representative Curtis Hartfield testified during questioning by the Employer's counsel that shortly after the election, he was called by former Employer Vice President Richard Rumsfeld. In the course of this conversation, Rumsfeld told Hartfield that DeMaria had promised employees that he would never cut the wages of any employee. He also said that Keeler's attorneys were very upset when they learned of the promise. Hartfield was not aware how Rumsfeld acquired this information.[5] Hartfield then contacted members of the union organizing committee who told him that such a promise had been made in the speeches given on June 27.

Employee Richard Thiebout testified that he attended a speech given to employees by DeMaria, about 2 days prior to the election. All employees were required to attend the meeting at which the speech was given. Thiebout estimated that the speech lasted about 45 minutes, and after giving the speech, DeMaria answered a few questions from employees. According to Thiebout, DeMaria, who had been in office for about 6 months, said that he would run the Company better than previous management. He also said that the past management had made a lot of mistakes, that cutting wages was one of the biggest mistakes, and he would never even think of cutting wages. He also said that he was new to the Company, asked that he be given the chance to make the Company run better and that if the employees did not like the way he ran things, there could be a new election in 1 year. According to Thiebout, the statements attributed to DeMaria were part of his prepared speech and were not made in response to questions.

Although Thiebout was on the union organizing committee, the things said by DeMaria did not bother him sufficiently to report them to union officials until after the election. He testified that about 2 weeks passed before he mentioned the speech to Union Representative Curtis Hartfield. Thiebout confirmed that other members of the organizing committee were present for this speech.

Employee Elwood Berman testified that he heard the speech and it was his impression that DeMaria got away from the written speech and appeared to be speaking more ''off the cuff.'' He remembers DeMaria saying that it was unfair for the Company to cut wages and that was one thing he would never do. He generally confirmed Thiebout's description of the speech given by DeMaria. He also said that

[5] Rumsfeld was evidently discharged by the Employer well before the speeches in question were given. There was no showing made that he attended any of the meetings at which the speeches were delivered. Therefore, his comments concerning the speeches must come from unknown sources and I do not consider this reliable evidence. I will credit Hartfield's testimony about this conversation only for the purpose of evaluating when the Union first learned of the alleged objectionable statements in the speeches.

the speech did not bother him one way or the other. On cross-examination the witness testified that he saw Union Representative Hartfield after the speech and before the election, but he did not mention what DeMaria said. On redirect examination, he seemed to testify that he did not see Hartfield after the speech for about 2 weeks.

Employee Jurgen Hoffman remembered DeMaria mentioning pay cuts, saying that was pretty drastic. He said that was something he would never do even though the Company was not profitable. He also remembered DeMaria saying the other things witness Thiebout remembered. Hoffman, also a member of the union organizing committee, did not mention the speech to Hartfield. Hoffman testified that DeMaria read his speech. Hoffman met with another union representative, Bieber, on the day of the election and could not remember if he spoke to him about the speech.

With respect to this matter, I credit DeMaria's testimony that he read his speech and did not vary from the text. The matter of what Rumsfeld told Hartfield does not appear to be really relevant as there is no showing that Rumsfeld actually heard any of the speeches in question. Although the union campaign committee members who testified on this question remembered after the election that DeMaria strayed from his speech, they were not upset enough about the alleged deviations to report the matter to Hartfield immediately after the speeches, even though they had been instructed to report any possible violations of campaign rules, such as the promise of a benefit made by management. The varying stories of how and when Hartfield learned of the alleged promise of a benefit makes me seriously question the accuracy of the description of DeMaria's remarks by the Union's witnesses on this point.[6] I do not find the speech as written, and read, to promise a benefit, and do not sustain this objection to the election. Given the fact that previous management had cut wages, and that during the campaign and before the speeches, the Union had openly challenged the Employer to restore the wage cuts without fear of charges being filed, I do not believe that the Union can now properly object to the rather mild response of DeMaria to the Union's challenge. The apparent lack of impression made by the speeches on the Union's organizing committee reinforces my view that the speeches did not unfairly affect the employees' free choice in the election.

2. The question of the adequacy of the *Excelsior* list

One of the Union's objections to the election alleges that the Employer failed to prepare and/or correct a proper *Excelsior* list. Union Representative Hartfield testified that he first received the *Excelsior* list for the involved election on May 22. On June 2, the Union sent a letter to the Board's office in Grand Rapids complaining that the *Excelsior* list supplied had omissions and problems including (1) names without addresses or zip codes, (2) addresses without names, (3) names and addresses that were not legible and (4) names and addresses that were duplicates. In total, there were 18 names of employees involved in the Union's complaint.

Though the letter does not mention the fact, there were 25 or 26 (about 2.5 percent of eligible voters) employees' names left off the list. These are employees whom the Employer either now agrees or contends were eligible to vote in the election. The Union was aware of at least two of the persons whose names were not listed as they were on the organizing committee. If the Union's contention that temporary employees were eligible to vote were correct, the number of missing names rises to about 50. Temporary employees were either purposely omitted from the list by Keeler as it contends they are not eligible voters or they were omitted as they do not receive fringe benefits and the list was prepared from the benefits computer program. The other omissions were inadvertent.[7]

The Employer did not have a list of hourly employees already made when it was requested to prepare the *Excelsior* list. It utilized a computer listing of employees on the benefits department computer system. The Employer contends, and there is no evidence to the contrary, that the names were omitted from the list because the benefits department was engaged in special projects at the time of the list's preparation and was behind in paperwork. At least some of the mistakes with respect to addresses were caused by having to redesign the benefits department's computer program to print the list of names on computer paper rather than mailing labels, which resulted in some names being printed in margins and some on the continuous paper's perforations.

The Board inquired about these complaints with the Employer and received a revised list, which was forwarded to the Union on June 9. Utilizing this list, the Union mailed a number of pieces of campaign literature to employees prior to the election. Hartfield testified that there were about 70 Keeler employees on the organizing committee, of which he estimated about 50 percent were active in organizing activities. He testified that prior to the Union's petition being filed, he was confident that both authorization cards and union literature were being distributed effectively at both involved Keeler plants. The union held about 10 meetings with members of the organizing committee during the campaign, which began in November 1988.

Other than perhaps the temporary employees, there was no showing that any eligible employee's name was purposely left off the *Excelsior* list by the Employer. Keeler itself re-

[6] This objection was filed several days after the period specified by Sec. 102.69(a) of the Board's Rules and Regulations. The Board has recently held that the 7-day time limit for filing objections set by this Rule should be strictly enforced. *Kano Trucking Service*, 295 NLRB 514 (1989); *Star Video Entertainment L.P.*, 290 NLRB 1010 (1988); *North Star Steel Co.*, 289 NLRB 1188 (1988). An exception to this rule may be made if the objection was based on evidence ''newly discovered and previously unavailable.'' *Burns Security Services*, 256 NLRB 959 (1981). Although I allowed evidence on this objection at the hearing and make findings with respect to it in this decision, I do not believe that the Union has properly demonstrated that the evidence relating to the speeches was ''newly discovered.'' Because the attendance at the speeches was mandatory, most, if not all, of the organizing committee members must have attended the involved meetings and heard the speeches. At least some of these members, and certainly Wells, have knowledge with respect to what constitutes objectionable conduct during an election campaign. Yet not one member of the committee reported the alleged promise of benefits until asked about it at some point after the election. I believe this silence can only be construed two ways. One, as I find above, DeMaria did not make the objectionable promise; or, two, the Union was negligent in its handling of the matter and the objection should not be considered as it was untimely filed. I have considered it only because it involves one of the most serious, if not the most serious, allegations of Employer misconduct, and one which would in all likelihood require overturning the election if proven.

[7] I hereinafter find that the temporary employees were not eligible to vote in the election and thus their exclusion from the *Excelsior* list was not improper.

lied upon the list it sent the Union to mail its own campaign literature. Moreover, though the Union was in a position to know, and did know at the time it received the list that some eligible voters names were omitted, it did not complain about these omissions until after the election. As noted above, the Union also had and utilized other effective means of communication with employees other than mailings from the *Excelsior* list. I believe that under the circumstances, the inadvertent omission of some 2.5 percent of eligible voters from the list supplied does not constitute insubstantial compliance with the rules concerning preparation of the *Excelsior* list. *Kentfield Medical Hospital*, 219 NLRB 174 (1975); *Sonfarrel, Inc*., 188 NLRB 969 (1971); *Texas Christian University*, 22 NLRB 396 (1975). Accordingly, I will recommend dismissal of the objection to the election relating to the *Excelsior* list.

3. The ''Keeler Temps'' objection

The Union filed an objection alleging that the Employer told a group of 20 to 26 employees that they were ''Keeler Temps'' and could not vote. In this regard, former employee Darlene Escanuela testified that she began working for the Employer in November 1988 as a mold and injection operator, before moving to the finishing room operation. She regularly worked 40 or more hours per week in her job. When hired, she was told she was a temporary employee, a ''Keeler Temp.'' Her initial understanding of this position was that she was temporary until she completed a ninety day probationary period, after which she would become a permanent, full-time employee, entitled to fringe benefits. She later learned that the position was temporary and that temporary employees did not receive these benefits, no matter how many hours they worked. At the outset of her involved employment, she was on the payroll of an employment agency, Osteen, but transferred to Keeler's payroll after 8 or 9 weeks. During her employment with Keeler, which ended in July, she never received fringe benefits. On or about July 19, all but one of the 20 or 25 ''Keeler Temps'' employed in the K B Lighting area was terminated, when the need for their services ended.

In June, Escanuela was working in the finishing department with about three other ''Keeler Temps'' and several regular, full-time employees under the supervision of Doug Hicks. Escanuela desired to vote in the election and approached Hicks to ask him how she could get to vote. Hicks told her she was a ''Keeler Temp'' and ''Keeler Temps'' could not vote in the election. Another temporary employee was present when Hicks made this statement. Although Escanuela was on second shift, she did not vote with this shift as she thought she would get into trouble with her supervisor. She did vote however, and her ballot was challenged as her name did not appear on the *Excelsior* list, temporary employees' names having been excluded therefrom by the Employer. Temporary employees are specifically excluded from the involved unit description.

I do not find the objection relating to the ''Keeler Temps'' to have merit. These employees were temporary employees hired for a limited duration and were told they were temporary employees. The unit description specifically excludes temporary employees from its scope and thus, Hicks properly informed Escanuela that she was ineligible to vote. I will recommend that this objection to the election be dismissed.

4. The ''Just Say No'' T-shirt objection

Patricia Gates testified that as of the date of hearing, she had been employed by Keeler at its Kentwood plant for about 9 or 10 months. Her supervisor was Brian Dahlman, who she observed taking names for T-shirts about a week before the election. The T-shirts had on one side the message, ''Just Say No,'' and the company name on the other.[8] Dahlman asked the employees in her department if they wanted a shirt and if they did, took their size. Gates also testified that some of her fellow employees told her that they would not wear T-shirts distributed by the Union for fear of losing their jobs.

However, Gates wore her UAW T-shirt to work without any adverse consequences and the credible testimony of Keeler's human resources representative established that many of Keeler's employees wore union T-shirts at work on a daily basis both before and after the election. This representative, Patricia Caudill, also testified that foremen were told that the company T-shirts were available and that they were to check with the employees to see who wanted one and in what size. I do not believe that asking whether the employees wanted a T-shirt and if so, in what size, constituted either coercive solicitation by the employer or objectionable polling. In the case cited by the Union on brief, employees were asked in a speech by the Company's president to wear a company tag as a symbol of where the employee stood on the company vs. the union issue. In the instant case, the employees were merely asked whether they wanted a company T-shirt with no requirement that it be worn. In the same workplace, many employees were wearing union T-shirts with no credible evidence being offered that employees were being harassed or discriminated against for wearing them. I do not find that this objection has merit.

D. *Conclusions with Respect to the Unfair Labor Practice Allegations and the Objections to the Election*

In conclusion with respect to the unfair labor practices and the objections, I would again state that though I have found two violations of Section 8(a)(1) of the Act, neither these de minimus and isolated violations nor the Employer's other actions complained of by the Union, even when viewed collectively, justify overturning the results of the election. The election, though close, involves a large number of voters. Both the Union and Employer conducted an active and extensive campaign, which, based on the evidence in this record, was remarkably free of conduct which could unlawfully or unfairly influence the outcome of the election. I believe that the conditions which the Board wishes and expects to exist in the period preceding an election, did exist in the instant election. There is virtually no credible evidence of coercion and intimidation, or any conduct which could reasonably be said to have interfered with the employees' free choice in the election.

E. *Challenges*

As noted on brief, there are two primary principles which must be used to determine whether individual employees

[8] It must be noted that the T-shirts in question appeared to be of unusually high quality and bearing as they did the current national antidrug slogan, probably would appeal to both union adherents as well as company supporters.

whose ballots have been challenged were in fact eligible to vote in the involved election. First, ''[I]t has long been recognized than an employee is eligible to vote in a Board election if he was employed during the eligibility payroll period and on the date of the election.'' *Choc-ola Bottlers*, 192 NLRB 1247 (1971). The payroll period for voting eligibility in this case was the weekly period ending May 7, 1989.

Second, whether individual employees are included in the bargaining unit as set forth in the election agreement depends on whether they share a sufficient ''community of interest'' with other unit employees. In *Kalamazoo Paper Box Corp*., 136 NLRB 134 (1962), the Board enumerated the factors to be considered in determining whether individuals have a community of interest apart from other employees such that they would not belong in the same unit:

> [A] difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and amount of working time spent away from the employment or plant situs . . . ; the infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining.

All of these factors will be considered with respect to the individual challenges set out below.

1. Shirley Blackmore

Shirley Blackmore was not on the *Excelsior* list and thus her ballot was challenged. The Employer contends that she was not eligible to vote in the election because she was not an employee on the cutoff date for eligibility and because as of the date of the election, she was a guard and excluded from the unit. Blackmore was a 13-year hourly production employee of Keeler who had served on the Union's organizing committee in a prior campaign. As of February 12, she had been on injured leave for over a year. During the first 12 months of her leave, the Company paid her benefits and workmen's compensation. Pursuant to the Company's rules, after 12 months of such leave, her benefits and seniority terminated, though the Company continued to pay workmen's compensation as it is self-insured for this purpose. It is the Company's policy to seek work within the restrictions imposed by such an employee's injuries in order to get some production from the employee for the money it is paying. If it offers work within the restrictions and the employee refuses to accept it, it can terminate its payments to the employee and permanently sever its relationship with the employee.

Employer Representative Pat Caudill testified that Blackmore, and other persons on injured status are still employees of Keeler. She also testified that the Employer did not terminate Blackmore in February, rather, it terminated her benefits.[9] Because of its continuing obligation to pay workmen's compensation benefits to a person on injured status, the Employer obviously has an expectation and hope that these persons will return to work at some point. Blackmore received a letter from the Employer telling her to report to work at the guard monitor position and threatened to terminate her if she did not. I find it unusual to threaten termination to a person if one has already terminated the employment of that person.

I find that Blackmore was employed as of the cutoff date for determination of the eligibility of employees to vote in the election, finding as I do that her employment was never terminated. There was an expectation both on the part of Blackmore and Keeler that she would ultimately return to production work at Keeler's facility. The work she was assigned as part of the return to productivity was clearly make work and not that of a guard. It is hard to square Keeler's position that Blackmore was a guard and thus ineligible to vote, with the contrary position it took with three other employees in a similar employment capacity. I believe that Keeler's tacit admission that the three other employees were not guards as evidenced by its lack of challenges to their votes completely undermines its argument that Blackmore was a guard. For all the ''guarding'' she was shown to have done, she could have just as well spent her time sitting in a corner of the plant during her working hours. *Shattuck School*, 189 NLRB 886 (1971); *Container Research Corp*., 188 NLRB 586 (1971). I find that Blackmore's ballot was improperly challenged and should be counted.

2. Tim Connor and Tom Hillbrand

The unit description contained in the election notice includes, ''factory laboratory employees,'' but excludes, ''technical employees.'' Hillbrand's job classification is ''Plating Process Laboratory Technician'' and Connor's is ''Photometric Technician.'' On brief, the Union now contends that the word ''laboratory'' in Hillbrand's description places him in the included category while the absence of that word places Connor in the excluded category. The Employer contends that both employees were eligible to vote. Relying on the parties' position as stated on brief, there is no longer any dispute as to Hillbrand's eligibility to vote and the Union's challenge is deemed to have been abandoned and Hillbrand's ballot should be counted.

[9] On receiving this letter, Blackmore reported to Caudill, who told her that she would be assigned to the guard shack as a ''guard shack monitor.'' Blackmore and all other formerly injured employees working under restrictions are assigned to Keeler's Department 290, which is the designation for people on workers' compensation. Keeler employs a professional guard company to provide security for its facilities. This company provides uniformed guards for this purpose. Although Caudill described Blackmore's job as that of a guard, the facts indicate that it is more of a make work job with no real guard duties involved. The position has no written job description. As described by Blackmore, she was told to sit in a chair in the guard shack when she reported for work. She was given no specific duties or training and was not required to be in the guard shack without a uniformed guard also being there. Other than sitting in the guard shack, Blackmore performed no duties; she did not watch the parking lots nor did she operate the buttons to raise and lower the gate to the plant. Unlike the professional guards, she did not wear a uniform or have a badge identifying her as a guard. Three other formerly injured employees were employed as guard shack monitors as of the date of the election. Their names were placed on the *Excelsior* list by the Employer and voted without challenge. Apparently, the only reason Blackmore's name did not appear on the *Excelsior* list was the fact that she was not receiving fringe benefits on the date the list was prepared from the computer program of Keeler's fringe benefits department. Keeler's manpower status control form, prepared for Blackmore after her termination from the fringe benefits list, under Section 1, sec. A, contains an ''x'' under the designation ''removal from payroll'' in the box next to ''termination.'' However, under a separate section that does not have the limitation ''removal from payroll,'' there is no indication that she was actually terminated as no boxes under ''termination: voluntary/involuntary'' or ''eligible for reemployment—yes/no'' are checked.

Five other employees share almost the exact terms and conditions of employment and supervision with Connor, namely, the five other quality testing employees, all of whom are supervised by Bob Kozak. All of these other five employees voted without challenge. Connor is an hourly employee who works regular first shift hours. He is paid an hourly rate of $8.80 an hour. This is the same as the other factory laboratory employees. It is also similar to other employees in the plant; for example, the quality auditors, who were permitted to vote in the election. Connor receives the same benefits as other hourly production and maintenance employees. His terms and conditions of employment are covered by the hourly production and maintenance employee handbook. He is evaluated on the same form as hourly production employees.

For his job, Connor has no specialized technical knowledge and his job only requires a month or two of on-the-job training. The requirements for his job are a high school diploma or the equivalent, or some actual laboratory experience. In this respect, Connor's training and qualifications are the same as the other end item technicians or factory laboratory employees. Connor, in conjunction with the other five employees supervised by Kozak, is responsible to check end products for defects or flaws, pursuant to specifications without the use or exercise of independent judgment. His job consists of taking head lamps and other lights from the production line and placing them on a fixture to be tested. He then turns the machinery apparatus on and lets it run for some time checking the part to see if it complies with the specifications he has been given. Connor follows specific directions in testing and deciding whether the parts have passed or failed. He does not make the fixtures utilized for testing.

In the course of his duties, Connor has contact with other hourly production and maintenance employees. His job requires that he be in the factory itself at least 30 percent of the time. At other times, he is in the lab area, which is located in the factory. Connor also picks up tools and takes scrap back to the scrap area. He takes breaks with hourly production and maintenance employees. Connor is also interchanged with the other factory laboratory employees and is cross-trained to perform their jobs, as they are trained to perform his. Connor desires to be in the bargaining unit and voted in prior elections in a different employment classification.

I believe that in all significant respects, Connor shares a community of interest with other hourly production and maintenance employees. There is no difference in the method of compensation, hours of work, employment benefits, and supervision. He is paid approximately the same hourly wage as other unit employees. Moreover, Connor has no dissimilar qualifications, training and skills and has frequent contact with other employees. His work functions are integrated with other employees and he desires to be part of the bargaining unit. Leaving him out of the unit would result in an anomalous situation in which he would be left alone for bargaining purposes, while others who were similarly situated are included in the unit, much as was the case with Blackmore. Therefore, I find the challenge to Connor's ballot to be improper and his vote should be counted.

3. David Bailey

David Bailey was an hourly employee at the Stevens Street plant. On June 26, he gave the employer 2 weeks' notice that he was going to quit. It is the employer's contention that it terminated him on that date and thus, he was ineligible to vote in the June 29 election. Bailey testified that he did not intend to quit on June 26, but requested his vacation start that day and his resignation would be effective at the end of his two week vacation period. He intended to use the two weeks to look for another job. During the 2-week period, he did not find other employment nor did he collect unemployment benefits. The Michigan Employment Security Commission issued a ruling that Bailey's last day of employment with Keeler was July 7.

During the 2-week period in question, Bailey attempted to go back to work at Keeler, but was denied this opportunity. After being challenged at the June 29 election, Bailey went to the plant on June 30 intending to work. His time card was in the rack when he punched in on June 30, and the card reflected that he was on vacation. Bailey's foreman was standing near the time clock and did not stop Bailey from punching in. Bailey asked the foreman if he could return to work and was told by the foreman that he considered Bailey to be on vacation and he should see the foreman's supervisor, Bob Burns. When Bailey approached Burns, Burns told him to come to his office. Once there, Bailey was given his termination papers, paycheck and bonus check. He did not receive his 3 days' additional accrued vacation at the time he was terminated, as is company policy. Payment for the 3 days came in his July check.

Employer Representative Deborah Orchard testified that she terminated Bailey's employment after receiving his notice and had his paycheck delivered to him by special delivery on June 28, admittedly an unusual means of getting a paycheck into the hands of an employee. Also unusual is the fact that terminated employees do not normally receive bonuses, and the next bonus for employees was for those employees on the payroll on June 30, the day after the election. Bailey received the June 30 bonus by check dated June 30. Employer Representative Orchard testified that it was the policy of the Employer to terminate individuals who give 2 weeks' notice at the end of the notice period. On brief, the Employer argues that it deviated from its normal practice in this regard because Bailey wanted to use his vacation as his notice period, and that the purpose of notice, to have time to find and train a replacement, was not served in his case. No one mentioned to Bailey when he reported for work on June 30, that a replacement had been hired or that some existing Keeler employee was being trained to take over his job.

The Employer violated several of its policies in its claimed termination of Bailey on the day he gave notice. Normally, he would be terminated at the end of the 2 weeks' notice period. It paid him a bonus which only employees on the payroll on June 30 were supposed to receive. It paid him for the Fourth July holiday which, if he were in fact terminated, he would not receive. It also deducted certain benefits from his July check, another indication that he was considered an employee as of June 30. Furthermore, no one informed Bailey that he had been terminated until his ballot was challenged at the June 29 election. As noted above, he did not receive his termination papers until June 30, when attempted to go

back to work. Also, it must be remembered that Bailey's timecard was in its normal slot on the June 30, and showed him on vacation, not terminated.

The Board has held that an employee employed on the date of the election is eligible to vote despite any intention to quit after the election. *Choc-ola Bottlers, Inc*., supra, citing *Personal Products Corp*., 114 NLRB 959 (1955); *Whiting Corp*., 99 NLRB 117 (1951). Because Bailey was not notified in advance of the election that his employment had been terminated and as such a termination is contrary to normal company policy, I find that he was employed on the date of the election and his vote should be counted. In further support of this finding is the fact that the Employer paid him a bonus to which he would not be entitled unless he was employed on June 30, the day after the election. The Employer's reason for departing from its normal procedure of terminating an employee at the end of his or her notice period appears to me to be an after-the-fact rationalization. It offered no proof that it took immediate action after receipt of Bailey's notice to replace him, which I believe would be the only action which would have justified the deviation from normal procedure. If, as the Employer contends, Bailey was terminated prior to the election, the only reason I believe exists for such termination is that the Employer did not want Bailey's vote to count, a clearly discriminatory reason. However, I find from the evidence that Bailey was employed on the date of the election and his alleged termination prior to the election was a fabrication on the part of the employer. I recommend that Bailey's ballot be counted.

4. Timekeepers

The ballots of five timekeepers are challenged by the Union, which contends that they are office clericals and not entitled to vote.[10] In prior elections at the facility, the position of timekeeper was specifically included in the bargaining unit description, but in the instant one was not so named. The Employer contends that timekeepers are factory clericals and thus entitled to vote. During the election, the timekeepers votes were solicited by both the Employer and the Union.

The timekeepers are hourly employees, paid $8–$8.25 per hour and receive the same benefits and are subject to the same rules as hourly production employees. However, their pay was not cut in the fall of 1988 as was the pay of most production workers. They can exercise bumping rights in the event of a layoff and bump into a production job in the plants. This bumping has occurred in the past when the Company began using computers and layed off some timekeepers. Timekeepers can also be bumped by production employees though this has never occurred. Timekeepers are allowed to wear and do wear blue jeans and shirts to work whereas female office employees are required to wear dresses or their equivalent. They punch a timeclock as do production employees, enter the plants through the same entrance as production employees and use the same washroom and break facilities.

Timekeepers go into the plant on a regular basis and take roll from timecards, pick up payroll vouchers from various stations throughout the plants and record necessary information in the Employer's computer system. They cannot, however, review data or pullup employee files. They are supervised by Jean Bird, who supervises no other employees. Certain of the Employer's correspondence and documents refers to the timekeepers as factory clericals. The timekeepers work an extra 1-1/2 to 2 hours per day because of their workload. None of the timekeepers work in the Employer's general administrative offices. The timekeepers at the Kentwood plant work in an enclosed area in the factory, about a 5-minute walk from the general office. At the Stevens Street plant, they work in an office area, but share locker, washroom, and break areas with the hourly production employees. They also enter work through the plant, not the office entrance.

I believe the evidence supports a finding that the timekeepers should be included in the unit. They are paid hourly and receive the same benefits as compared to other hourly employees. They are supervised by an individual who does not supervise other clearly non unit employees. Timekeepers do not have dissimilar qualifications, training, or skills from other bargaining unit members. Timekeepers have frequent and significant contact with other employees, their work function is integrated with other employees, and bargaining history reveals that timekeepers have traditionally been included in the bargaining unit. I believe that they are factory clericals and for that reason, their specific designation was not included in the most recent agreement as to the bargaining unit. They share much more in common with other factory employees than they do with the Company's office clericals. I find the challenges to the ballots of the timekeepers to be improper and direct that their votes be counted. See *J. Ray McDermott & Co*, 240 NLRB 864 (1979); *Century Electric Co*., 146 NLRB 232 (1964).

5. Production schedulers/expediters

Five production schedulers[11] and two production expediters[12] attempted to vote in the election, all of whom were initially challenged by the Board as they were not on the *Excelsior* list. They were left off the list because they were salaried rather than hourly employees. As was the case with the timekeepers, they were specifically listed in the earlier elections' bargaining unit descriptions, but not in the one for the instant election.

The production schedulers are on salary, are paid biweekly and make an average of $30,000 per year, contrasted with the $18,000 to $20,000 made by most production employees. Much of the difference in wages is caused by the substantial overtime worked by the production schedulers. They are paid time and a half for overtime work. The production schedulers have assigned parking whereas production employees do not. All of these schedulers are supervised by Michael Schillim, who supervises no production employees. All of the other people supervised by him are apparently general office personnel. Schedulers are responsible for customer orders and getting the schedule to the expediter so he can expedite the parts. Schedulers have occasional customer contact, though

[10] These individuals are: Tina Freyling, Carol Dohrn, Theresa Jeurink, Marie Klutman, and Joyce Tompkins. Another timekeeper, Rita Van Houten was challenged when she attempted to vote, but the union officials at the election decided to withdraw the challenge after a discussion among themselves.

[11] The production schedulers in question are Howard Hendricks, Dennis Hill, Ronald Laninga, Diane Ludlow, and John Westerling.

[12] The production expediters are Harold DeRidder and Tim Miller.

expediters do not. Schedulers can exercise independent judgment or discretion whereas expediters must see a foreman or scheduler when a problem arises.

Schedulers have desks with telephones and computer monitors at designated points in the plants. The terms of their employment are controlled by the production and maintenance employee handbook. Each of the schedulers has a fair amount of contact with production workers, though their primary contact is with foremen. This contact can be tense as the schedulers are expected to be aggressive in seeing that schedules are met. Two of the schedulers, Diane Ludlow and John Westerling, have more customer contact than the other three and have more responsibility.

Schedulers receive orders from customers through the Employer's customer service department and prepare schedules to meet the customers' needs. These are given to the expediters who fill in numbers and give them to the foremen. In preparing the schedule, the scheduler checks stock records and checks with the foremen. They use computers to see if stock levels are right and if not, make physical parts inventories.

Although the question is very close, I find that the production schedulers should be excluded from the unit. They are paid on a different basis than hourly employees and paid significantly higher wages. They have different and significantly better benefits and different supervision from production employees. Their contact with other employees is almost supervisory in nature, and by its nature, almost adversarial. They can exercise independent judgment within the scope of their jobs and utilize the employer's computers to a great extent. I find that they are best termed office clericals, not factory clericals. Consequently, I find that the challenge to their ballots should be upheld. The production expediters, however, have working conditions that more closely approximate those of other hourly employees and should be included in the unit.

Harold DeRidder is a production expeditor who works in injection molding, where he has a desk. He reports to work about an hour earlier than production employees. As noted above, he is to expedite schedules and has regular, sometimes tense, contact with foremen. Although on salary, he is entitled to the hourly, rather than the salary bonus program. He receives time and a half for hours over 40 per week. The production and maintenance handbook covers his terms and conditions of employment. Unlike the schedulers, he does not exercise independent judgement and was not shown to have customer contact. His job is fairly integrated with the production process, routinely filling in numbers and part types on forms pursuant to instructions from schedulers. He does not resolve scheduling problems and deal with delay, but merely tells the foreman that the schedule is not being met. DeRidder's place of work is located in the injection molding department, where he assists production workers in getting parts to make sure they have sufficient stock.

Tim Miller is a production expeditor who works in the screw department. While Miller had been on salary for several months prior to the election, his duties had not changed since he was an hourly paid screw coordinator. Miller was placed on salary and given the title production expeditor to keep him in the screw department because he was contemplating taking a salaried position elsewhere in the plant. The salary that Miller receives is less than salaried production expediters and schedulers normally receive. Unlike other salaried employees, he has not been placed in a salary grade system. His salary is simply his hourly rate of pay prorated for an anticipated 2080 hours worked during a calendar year. Miller's hourly rate would place him somewhere midway in the range of employees in the screw department.

Miller works regular first shift hours and his employment is controlled by the hourly production and maintenance employee handbook. He receives time and a half for overtime, does not have an assigned parking space or telephone. He is evaluated on an hourly, not a salaried employee evaluation form. Miller is supervised by Marv Mastbergen, the regular screw department supervisor. Mastbergen runs the screw department and supervises all screw department hourly production employees. Miller spends all his time in the screw department and has no special training except on the job training. He works from a desk near his supervisor's desk. Miller's specific duties include taking information that his supervisor has written down and filling in blanks to create a schedule pursuant to this information and information received from the sales department. Miller does not independently decide which employees will do work, or how the work will be done. He has no customer contact. He does have regular contact with production employees in his department and takes breaks with them and works under the same physical conditions.

I believe that the facts reflect that both DeRidder and Miller should be in the unit. Although on salary, their salary is close to the hourly wage and appears tied to the hourly wage scale. Their benefits are those of hourly employees and in the case of Miller, his supervisor is a production supervisor. They have little contact with customers, unlike the schedulers, and their work appears to be more integrated with the production workers than that of the schedulers. The expediters do not have quasisupervisory status as do the schedulers and do not have to solve production problems with foremen as do the schedulers. I believe there are sufficient differences between the schedulers and the expediters to justify excluding the schedulers as office clericals and include the expediters as factory clericals. I find that the challenges to the ballots of Miller and DeRidder were improper and their votes should be counted.

6. Temporary supervisors or assistant or acting foremen

The Employer has had designated temporary supervisors for a substantial period of time. These temporary supervisors are referred to by employees as acting foremen, assistant foremen, or acting supervisors. In February 1989, Keeler instructed its superintendents and supervisors to designate individuals in their departments who would be eligible to be designated as temporary supervisors in the event the regular supervisor or superintendent was absent or additional supervision was needed. For the individuals designated, Keeler issued a ''manpower status control form'' (msc form) denoting the potential temporary supervisor status. When acting as a temporary supervisor, the designated individual receives an additional $1 per hour. When not designated to perform the duties of a temporary supervisor, the involved individual performs normal hourly production work. Appointment to a temporary supervisor position will help determine an employee's qualifications for a position in which management experience is required.

There is some conflict in the record over the scope of authority possessed by the temporary supervisors. I believe this conflict exists primarily because the Employer has not seen fit to establish a formal classification for the position which would spell out the scope of authority. As matters now stand, each superintendent and full-time supervisor who has one or more temporary supervisors working under him can apparently establish individual limits on the authority of those temporary supervisors. As will be seen from a discussion of the facts surrounding the challenged individual temporary supervisors, this authority ranges from the full supervisory status of Bruce Houseman, discussed earlier, to a position more akin to a leadman or setup person than a supervisor.

Employee Lynn Wells testified that on some unspecified occasion, then Employer Human Resources Director Dick Rumsfeld told him that temporary supervisors had full supervisory authority whether exercised or not. The Employer questions whether this conversation ever took place; however, I credit it as Wells appeared to be a credible witness and the statement is entirely consistent with the purpose behind having temporary supervisors. Pat Caudill of the human resources department testified that the primary duty of temporary supervisors is to replace the full-time supervisor when that person is on vacation or otherwise absent from the plant. To fill in for a full-time supervisor when he or she is absent, the temporary supervisor would logically need to possess the authority of the person whose position is being temporarily filled. As most completely developed in the record in the case of Houseman, some of the Employer's superintendents and/or supervisors find it necessary to have temporary supervisors in their departments on a regular basis, without regard to the absence or presence of the full-time supervisor. In this circumstance, the degree to which the temporary supervisor actually supervises is apparently at the discretion of the full-time supervisor or his or her superintendent.

Another matter to take into consideration when assessing the supervisory status of the challenged individuals is the scope of the authority of the permanent supervisors. Superintendents and supervisors do not make employment related decisions. Hiring and firing is done by the human resources department. Decisions on layoffs are not made by the superintendents or supervisors, but are made by higher management. Discipline decisions, except the most minor, are made by higher management, in conjunction with the supervisors. Much of the work at the employer's facilities appears to be of a routine and repetitive nature and is controlled not by the full time supervisors, but by the production schedulers and expediters and their supervisors. Therefore in the ordinary course of events, even full time supervisors do not exercise much,if any, independent judgment when assigning work. Thus, the exercise of many of the indicia of supervision to which the Board looks to determine supervisory status are missing even from the admitted supervisors. This situation makes it very difficult to 90 say that a particular person serving as a temporary supervisor is or is not a statutory supervisor based on the sketchy evidence in this record. However, where the record is fully developed, as with Houseman, I believe it is clear that temporary supervisors are supervisors within the meaning of the Act when serving in the temporary supervisor capacity.

Because of the admission of Rumsfeld that temporary supervisors possess full supervisory authority whether exercised or not, I have given substantial weight to any corroborating evidence adduced with respect to individual temporary supervisors whose ballots were challenged. However, I believe that the Union had the burden of adducing some specific evidence bearing on each of the challenged temporary supervisors in light of the clear evidence that not all temporary supervisors are allowed by their full-time supervisors or superintendents to exercise full supervisory powers. The evidence shows that the Union, though stating that its intention was to challenge the votes of all temporary supervisors, actually challenged just some of them.[13] This discretionary challenging process could be explained on the basis that the Union had determined how each individual temporary supervisor might vote, or just as likely, some individuals so designated by the Employer are considered supervisors by other employees and other individual so designated are not. The record also reveals that some individuals served as temporary supervisors for substantial periods of time in the months preceding the election and others served only infrequently and sporadically. Again, the degree of service was evidently the choice of the permanent supervisors.

The status of supervisor under the Act is determined by the individual's duties, not by his or her title or job classification. Under the terms of Section 2(11), a supervisor is any person having authority in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Thus, a person's power to act as an agent of the employer in relations with other employees and his or her exercise of independent judgment of some nature establish his or her status as a supervisor. In order to be classified as a supervisor, a person need not meet all the criteria of Section 2(11). The enumerated functions of a supervisor are listed disjunctively. Nevertheless, the statute insists that a supervisor have authority to use independent judgment in performing such supervisory functions in the interest of management.

While the exercise of one or more of the statutorily described functions is always the focal point for assessing the supervisory status of an individual, in borderline cases, the Board also considers so-called secondary indicia in determining whether a particular individual is or is not a supervisor within the meaning of the Act. The secondary factors include whether the individual is considered by his fellow workers and by himself to be a supervisor, attends management meetings, receives a higher wage rate than his fellow workers, and has substantially different benefits from his fellow employees. The ratio of supervisors to supervised employees is another frequently considered secondary factor in determining supervisory status.

A person with full-time supervisory authority does not lose supervisory status because that authority is exercised only infrequently. However, a rank-and-file employee does not be-

[13] The Union challenged the votes of temporary Supervisors John Wulfsen, Don Barnes, William Barnes, Jerry Hall, Archie Rayl, Adrian Wouters, Robert Shomler, Gerry Kaminski, Bruce Houseman, and Roland Ade. At least 21 employees, in addition to those challenged, acted as temporary supervisors prior to the election. At least 15 of these temporary supervisors voted without union challenge.

come a supervisor because of sporadic and infrequent assumption of supervisory duties. In the recent case of *Canonie Transportation Co.*, 289 NLRB 299, supra, the Board held that where an individual exercises supervisory authority over fellow unit employees in the same workplace where they perform rank and file duties, they will be excluded from the unit when they spend a regular and substantial portion of their working time performing supervisory tasks, but not when such substitution is merely sporadic and insignificant. In that case, the Board found regular and substantial 17 weeks of duty as a temporary supervisor in a period from April through December. During those 17 weeks, the person in question worked as a temporary supervisor from 8 to 40 hours per week.

The specific evidence relating to the supervisory status of the challenged individuals will be set out below and discused in light of the foregoing principles.

a. *Roland Ade*

Roland Ade is classified as a setup person and works under the supervision of Marv Mastbergen. He has been appointed to act as temporary supervisor when necessary because of Mastbergen's absence. He works regular shift hours and does not attend management meetings. Mastbergen described Ade's temporary supervisor function as, ''You'd call it supervise my people, I guess, while I'm gone, while I'm on vacation.'' Mastbergen also testified that the supervisory authority vested in Ade is what Mastbergen in his judgment believes Ade should have authority to do. This involves passing out work assignments and solving routine problems that might arise. Presumably, independent judgment is required in this regard as there was not shown to be a set procedure or manual detailing how to deal with problems in this department. As is the case with all temporary supervisors, Ade cannot discipline employees and can only report the need for discipline to Mastbergen's supervisor in Mastbergen's absence. However, as noted in the general discussion above, apparently even Mastbergen would be required to report the need for discipline to his superintendent and receive his approval before administering discipline. From the evidence, it would appear that either Ade or Mastbergen can effectively recommend discipline. I believe that the evidence on the primary indicia of supervisory status supports a finding that Ade is a supervisor within the meaning of the Act when serving as a temporary supervisor.

Just prior to the election, Ade received hazardous waste training and listed himself as of May 10 as an assistant supervisor. He had previously had supervisory training and received a certificate on July 9, 1979. Therefore, there exists secondary indications that Ade is a supervisor. The extended labor transaction reports, which are incomplete, show that he worked as a supervisor between 24 and 44 hours per week for nearly every week for 3 or 4 months prior to the election, with the exception of 2 weeks in May when he appears to have been on vacation. Certainly this level of service as a temporary supervisor calls for his exclusion based on the Board's holding in Canonie, supra. I sustain the challenge to Ade's ballot in the election.

b. *Donald Barnes*

At the time of the election, Don Barnes was an hourly production employee classified as a plater operator. He worked second shift in Department 244, the plating department. Barnes received his appointment as temporary supervisor on February 27. He received his Foreman certificate from the Association Management Education Institute in 1986. He had previously worked as a foreman for Keeler. Barnes went on medical leave beginning in April and was still in that status on the day of the election. In the 8 months prior to the election, Barnes was paid for being a temporary supervisor for approximately 98 hours. However, he was not paid as such for any time after February.

The only evidence of his duties when acting as temporary supervisor is found in a 1986 resume, where he states ''For the last six years I have been backup supervisor in the Plating Department, filling out attendance records, pushing the hot jobs, and maintaining a good relationship with the workers.'' The stated purpose of the resume was to achieve Barnes' goal of becoming the supervisor of his department when the time comes.

I do not believe that Barnes served in the temporary supervisor capacity for a sufficient amount of time in any relevant period prior to the election to meet the ''regular and substantial'' time test. Therefore, I would overrule the challenge to his ballot.

c. *William Barnes*

Employee Steven Marshall testified that William Barnes was a temporary supervisor in his department and had signed ''idle slips'' when they were working on piece rate. Barnes was paid as a temporary supervisor for over 200 hours in the 4 months prior to March 1989. The Employer contends that Barnes was not a temporary supervisor after February as no manpower status control form was ever executed for him then, when such forms were cut for all temporary supervisors. As Marshall did not specify a timeframe when Barnes served as temporary supervisor, I have to assume that it was before February. As Barnes was not designated as a supervisor when the Employer formally issued such designations, and in the absence of any clear proof that he acted in that capacity after February without formal designation, I cannot find that he was a statutory supervisor and his vote should be counted.

d. *Jerry Hall*

Employee Manard Flikkema testified that when Hall serves as temporary supervisor in his department, he spends most of the day in the office and hands out work assignments. He occupies the supervisor's office when his supervisor is gone. Hall takes attendance, and resolves disputes between employees, presumably exercising independent judgement in doing so. Although Hall had never been involved in disciplining an employee in the department, neither had the permanent supervisor. Although Hall worked only approximately 100 hours as temporary supervisor in the 8 months prior to the election, most of this time was in the period immediately preceding the election. As Hall was shown to perform the same tasks as his supervisor when acting as temporary supervisor, including resolving employee disputes,

and as his status as temporary supervisor had grown to almost full time before the election, I find that he was a supervisor within the meaning of the Act and the challenge to his vote is sustained.

e. *Gerry Kaminski*

Kaminski was a die-cast machine operator at the Stevens Street plant, where he was designated as temporary foreman. He worked in the supervisory capacity for about 100 hours in the 8 months prior to the election. A substantial portion of this time was when he filled in for his supervisor when the supervisor was on vacation. The rest of the time as a temporary supervisor occurred irregularly and sporadically, and in my opinion the level of time spent as temporary supervisor does not qualify under the regular and substantial time test. Therefore, I would overrule the challenge to his ballot.

f. *Robert Shomler*

The evidence reflects that when Shomler acts as temporary supervisor, he does the same things as the full-time supervisor. Employee Jim Young testified that this includes signing vacation slips, assigning work and solving or attempting to solve employee problems. There was given by Young a specific example of Shomler's attempt, albeit unsuccessful, to solve an employee's problem. I believe that the fact that Shomler attempted to address this problem indicates that he had the authority to handle such problems independently. His failure to do so does not detract from his authority. Shomler received training as a supervisor and he was paid as a temporary supervisor for about 140 hours in the 5 months prior to the election. The question in my mind is whether this constitutes a ''substantial'' portion of his time. My understanding of the payroll records reflects that Shomler served regularly as a temporary supervisor, but only for parts of days. I believe that the regularity of such service is more important than the total amount of hours served and find that Shomler was a supervisor and his vote should not be counted.

g. *Adrian Wouters*

There is very little evidence in the record regarding what Wouters does when he serves as temporary supervisor. He has signed vacation slips, though at Keeler, this is a routine function. He has received special hazardous waste training, though this is not a significant indicia of supervisory status. He was paid as a temporary supervisor for approximated 60–70 hours in the month prior to the election. On the other hand, in the 7 months preceding June, he worked only 3 days in April, a week in May, and another 2 days at the end of May in the temporary supervisor capacity. Though his total hours of service in this capacity might approach that of Shomler, the sporadic and infrequent nature of the service does not meet the Board's regular and substantial time test. Additionally, in the absence of any evidence of what he does when serving as a temporary supervisor, I cannot find that he is a statutory supervisor. For these reason, I would overrule the challenge to his vote.

h. *Archie Rayl*

The evidence regarding Rayl is slight. Documents in the record indicate that he received special hazardous waste training just prior to the election and his position of the certificate issued is listed as assistant foreman. His service as temporary supervisor prior to June was almost nonexistent, but was substantial in that month, being 34 hours in the week of June 5–11, and 50 hours in the week of June 17. There is no explanation in the record for this substantial increase in Rayl's service as temporary supervisor. However, because one of the primary reasons for having temporary supervisors is to serve in the absence of the full-time supervisor, it would be logical to assume that Rayl's supervisor was absent during those weeks, on vacation or some other form of leave. I do not believe there is enough evidence in the record to find that Rayl was a supervisor, and his service in that capacity, though substantial for one recent 2-week period, was very sporadic otherwise. Even if his duties would qualify him as a supervisor when he serves as temporary supervisor, I do not find that he spent a regular and substantial portion of his time in this capacity over any meaningful period, and thus would overrule the challenge to his ballot.

i. *John Wulfsen*

Wulfsen was shown to have served as temporary supervisor only very sporadically, one-half day in March, 1 day in April, 1 day in May, and not at all during June. I find that he did not spend a regular and substantial portion of his time during any relevant period acting as a supervisor and his vote should be counted.

j. *Bruce Houseman*

I have heretofore found Houseman to be a supervisor within the meaning of the Act, serving in that capacity for a regular and substantial portion of the time in the months preceding the election. Therefore, I would sustain the challenge to his ballot.

CONCLUSIONS OF LAW

1. Respondent Keeler Brass Automotive Group, a Division of Keeler Brass Company and K B Lighting, a Joint Venture of Keeler Brass Company, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By the actions of its agent, Lori Lotterman, on or about June 7, 12, and 14, 1989, in discriminatorily removing and retaining Charging Party union literature from employee breaktables, Respondent violated Section 8(a)(1) of the Act.

4. By the actions of its supervisor and agent, Bruce Houseman, on May 8 and 9, 1989, in polling employees with respect to their union sympathies, Respondent violated Section 8(a)(1) of the Act.

5. The unfair labor practices found to have been committed above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

6. The appropriate unit is:

> All full-time and regular part-time production and maintenance employees employed by Keeler Brass Automotive Group, a division of Keeler Brass Company, and KB Lighting, a joint venture of Keeler Brass

Company, at its facilities located at 2929 32nd Street, S.E., Kentwood, Michigan and 236 Stevens Street, S.W., Grand Rapids, Michigan, including all blockmakers, electricians, factory clerical employees, factory janitors, fork lift mechanics, inspection employees, factory laboratory employees, machine repair employees, machinists, material handlers, millwrights, pipefitters, set-up employees, sheetmetal employees, shipping and receiving employees, tool and die employees, truckdrivers and welders; BUT EXCLUDING all casual employees, confidential employees, draftsmen, engineering employees, managerial employees, office clerical employees, professional employees, technical employees, temporary employees, sales employees, watchmen, and all guards and supervisors as defined in the Act.

7. All objections to the election should be dismissed.

8. The challenges to the ballots of Bruce Houseman, Howard Hendricks, Dennis Hill, Robert Shomler, Ronald Laninga, Diane Ludlow, John Westerling, Roland Ade, and Jerry Hall should be sustained and their ballots should not be counted in determining the outcome of the election. The challenges to the ballots of John Wulfsen, Shirley Blackmore, Tim Connor, Tom Hillbrand, Harold DeRidder, Tim Miller, Archie Rayl, David Bailey, Tina Freyling, Carol Dohrn, Gerry Kaminski, Adrian Wouters, Theresa Jeurink, Marie Klutman, Joyce Tompkins, Don Barnes, and William Barnes are not sustained and their ballots should be counted in determining the outcome of the the election as they are sufficient to affect the outcome of the election.

THE REMEDY

Having found that the Respondent has committed violations of Section 8(a)(1) of the Act, it shall be ordered to cease and desist therefrom, and post an appropriate notice.

The Election Challenges and Objections

I recommend that Case 7–RC–18961 be remanded to the Regional Director for Region 7 with a direction to sustain the challenges to the ballots of Bruce Houseman, Howard Hendricks, Dennis Hill, Robert Shomler, Ronald Laninga, Diane Ludlow, John Westerling, Roland Ade, and Jerry Hall, and to overrule the challenges to the ballots of John Wulfsen, Shirley Blackmore, Tim Connor, Tom Hillbrand, Harold DeRidder, Tim Miller, Archie Rayl, David Bailey, Tina Freyling, Carol Dohrn, Gerry Kaminski, Adrian Wouters, Theresa Jeurink, Marie Klutman, Joyce Tompkins, Don Barnes, and William Barnes, and to open and count their ballots. I recommend that the Regional Director then serve on the parties a revised tally of ballots and issue the appropriate certification.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[14]

[14] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent Keeler Brass Automotive Group, a Division of Keeler Brass Company and K B Lighting, a Joint Venture of Keeler Brass Company, Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Removing from employee breaktables Charging Party union literature.

(b) Polling its employees concerning their union sympathies.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its facilities in Kentwood and Grand Rapids, Michigan, copies of the attached notice which is marked ''Appendix.''[15] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[15] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT remove union literature from employee breaktables.

WE WILL NOT poll our employees concerning their union sympathies.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

KEELER BRASS AUTOMOTIVE GROUP, A DIVISION OF KEELER BRASS COMPANY AND K B LIGHTING, A JOINT VENTURE OF KEELER BRASS COMPANY